Supreme Court, U.S.
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NO. 92-435

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

ARCHVIEW INVESTMENTS, INC., an Illinois corporation,

Petitioner,

vs.

CITY OF COLLINSVILLE, ILLINOIS a municipal Corporation; THE HONORABLE GENE J. BROMBOLICH, Mayor of the City of Collinsville; LOUIS JACKSTADT, City Clerk of the City of Collinsville; MELVIN HEINECKE, Zoning Administrator of the City of Collinsville; ROBERT L. DESPAIN, WILLIAM F. GIGLOTTO, GARY KLEIN, MELVIN P. PAMATOT, Collectively Councilmen Comprising the City Council of the City of Collinsville, Illinois,

Respondents.

BRIEF FOR RESPONDENT DESPAIN

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STATUTE

Collinsville Municipal Code 16.20.010 §16.20.010: "Any person not satisfied with the decision or actio nor failure to act of any officer on an application for a permit or for inspection or approval, or application for a permit or for inspection or approval, or any other administrative function in the administrative procedure provided in this chapter, may appeal within five days to the council. Such appeal shall be in writing, filed with the city clerk, and shall state briefly the alleged error in the decision or action or failure to act. The city clerk shall present the appeal to the council at its next regular meeting. The council may affirm or reverse, correct or remand the decision so appealed." (Prior code §6.25)

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Respondents.

BRIEF FOR RESPONDENT DESPAIN

TO: The Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States

STATEMENT OF FACTS

Respondent, Robert Despain, is a party to this litigation only by virtue of his attendance at a hearing on the Petitioner's Appeal for a building permit to the City Counsel of Collinsville, Illinois. As an elected member of the Council, it is true that Mr. Despain listened to the testimony proffered at the hearing, and joined in the vote to deny Petitioner's building permit. However, Mr. Despain's vote was based upon legitimate concerns raised at the hearing: the timeliness of the Petitioner's appeal to the Council, and Petitioner's failure to comply with the BOCA code.

While Mr. Despain will address only those factual inaccuracies and omissions pertinent to his very limited involvement in the process of reviewing Petitioner's application for the building permit, Petitioner's description of earlier events also contain some important omissions and undoubtedly will be addressed by co-respondents.

On March 23, 1991, the Mayor denied the Petitioner's

building permit and communicated that denial to Petitioner by way of a letter in which the Mayor stated that he was denying the application because of the applicant's refusal to cooperate and provide additional necessary information. (Petitioner's Appendix D, pages 46 – 47.) Respondent Despain was not privy to, nor contemporaneously aware of, any of the events leading up to the Mayor's decision. Mr. Despain was not aware of Dr. Escobedo's first application, second application, or any communications between the Mayor, the building inspector, Dr. Escobedo, or other representatives of the City or Archview.

While the facts to this point do not bear directly on the conduct of Respondent Despain, Petitioner's refusal to cooperate with the City's attempts to obtain additional information was discussed at length during the Council hearing. The trial judge perceptively noted that Petitioner, "created a situation of distrust and suspicion which contributed to the decision of the City Counsel against the issuance of the building permit."

Plaintiff's allegation that Respondent Despain violated Petitioner's constitutional rights must be judged solely upon a review of Mr. Despain's conduct at the Council hearing. Respondent Despain refers the court to the entire transcript of the proceedings of the hearing (Respondent's Appendix A). At the conclusion of the hearing, Respondent Despain voted to deny the building permit. Commissioner Pamatot moved that the Council concur with the position of the Mayor, and deny the building permit on three grounds: that the appeal was not timely filed, that the business to be operated in the building would be contrary to the general health, safety, and welfare of the public, and that the applicant failed to comply with the requirements of BOCA. At the time of his vote, Respondent Despain made a special point of saying that his vote was based upon only two of the three grounds, and not the "emotional" issue. (App. A, p. 54) Thus, Mr. Despain agreed with the decision to deny the building permit because of the Petitioner's failure to file a timely appeal and failure to comply

with BOCA.

The testimony at the Council hearing supported Mr. Despain's vote on these points, even though petitioner inaccurately states that the only thing discussed at the Council meeting was whether abortions would be performed in the proposed building. (See Petitioner's Brief at page 13.) In fact, the original transcript of the hearing is only twenty-two pages long and yet, four of those pages, or approximately one-fifth of the proceedings dealt entirely with the issue of whether Petitioner had filed a timely appeal to the City Counsel. (App. A, pp. 20-25) On the evidence presented, Mr. Despain could reasonably believe that Petitioner had failed to file a timely appeal and that the failure to file the timely appeal precluded any further proceedings on the question of whether the building permit should be denied.

Much of the Council hearing was consumed with testimony of the intended use of the building and the Petitioner's failure to adequately define the use on the building permit application. (App.

A, pp. 15–20, 25–44) Petitioner characterized this testimony as solely pertaining to a concern that the building would be used for abortions. Regardless, according to the testimony presented at the Council hearing, the BOCA code required disclosure of the intended use of the building and further required disclosure of the identity of the responsible officers of the corporations. (App. A, pp. 12,13) Since this information was lacking in the application and since repeated efforts to discover the information were rebuffed, the counsel had no obligation to grant the permit over the denial by the Mayor. This is particularly so since those who testified on behalf of Petitioner at the Council hearing did not deny that the application contained violations of BOCA.

The evidence pertinent to Respondent Robert Despain's conduct can only lead to one conclusion: that Respondent Despain in particular did not violate Petitioner's constitutional rights by acting arbitrarily or capriously. Moreover, the evidence supports confirmation of the trial court's finding that Respondent Despain

was entitled to qualified immunity since his actions were objectively reasonable and were not contrary to any known constitutional right of the Petitioner.

ARGUMENT I

THE ILLINOIS APPELLATE COURT DID NOT ERROR IN ITS FINDING THAT THE CONSTITUTIONALITY OF THE CITY'S ACTIONS CAN NOT BE CONSIDERED BECAUSE PETITIONER DID NOT ABIDE BY THE BOCA REQUIREMENTS.

In Count V of the Second Amended Complaint, Petitioner Archview sought compensatory and punitive money damages against Defendant Despain (and the other individual city council members) for malicious deprivation of constitutional rights under 42 USCA, §1983.

The Trial Court found that Petitioner Archview failed to fully comply with the then applicable City Ordinances of Collinsville regarding its building permit application process. The Trial Court specifically found (a) that "the application of the City of Collinsville's ordinances regarding building permits was reasonable"; (b) that the actions of the City Council were no "mere

subterfuge for what was in reality a discriminatory decision";[1] (c) that the Court considered "all the facts" including the "evasiveness of Dr. Escobedo", his refusal to "provide requested information", and the fact that he did not "fully comply with all the applicable ordinances"; and (d) that the "building plans were clearly deficient".

The Illinois Appellate Court correctly found that the constitutionality of the City's actions could not be considered because the Petitioner did not abide by BOCA requirements. The court's analysis turned on the fact that constitutional questions will not be considered unless necessary to the disposition of the case. Davis v. City of Chicago, 59 Ill. 2d 439, 322 N.E.2d 29 (1974); People v. Fleming, 50 Ill. 2d 141, 277 N.E.2d 872 (1971); Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 80 Led. 688, 56 S.Ct. 466 (Branders, J., concurring) (1936). In particular,

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[1] This language is an essential holding from the decision of Bossier City Medical Suite, Inc., v. City of Bossier City, 483 F.Supp. 633 (W.D. La. 1980), which is a crucial, parallel case, and which the Trial Court relied upon in its decision.

the court noted that this specifically applies to questions based on §1983. Cochenour v. Cochenour, 888 F.2d 1244 (8th Cir. 1989); Espino v. Besteiro, 708 F.2d 1002 (5th Cir. 1983).

For instance, in Cochenour, 888 F.2d at 1246, the court stated that for a §1983 claim, causation is a necessary element. The court refused to consider the §1983 constitutional claim because the cause of the property loss was the prior action of the property owner, not the state or county procedures. Id. Similarly, in the case at hand, the mayor and county board's views on abortion were not the cause of the denial of his permit. The Council, Trial and Appellate courts correctly found the cause was the petitioner's refusal to properly fill out the application. Petitioner failed to provide requested information, he did not fully comply with all the applicable ordinances and the building plans were deficient. (Petitioner's Brief, App. 19). Due to the inadequate application, the constitutionality of the council's actions need not be reached.

The cases cited by the petitioner to support on §1983 claim are all factually distinguishable from the case at hand. In the cases cited by petitioner, the permit applicants met the legal requirements contained in the ordinances, whereas here the Council and the Trial Court found the petitioner did not meet those requirements.

Petitioner Archview relies on Littlefield v. City of Afton, 785 F.2d 596 (8th Cir. 1986). While petitioner suggests it has a constitutionally protected property interest in its building permit, the Littlefield decision makes it clear that an applicant for a "building permit has a constitutionally protected property interest . . . conditioned only by compliance with the ordinances." (emphasis added). Id. at 602. In that case the court found in favor of the permit applicants because they had complied with, "all the legal requirements contained in the ordinances." (emphasis in original). Id. In this case, the Council, Trial Court, and Appellate Court agree that plaintiff's application failed to comply with BOCA provisions 111.2 through 111.7. Due to these violations, petitioner

does not have a constitutionally protected interest to have the building permit issued.

Second, plaintiff relies on Southern Co-Op Development Fund v. Drigger, 696 F.2d 1347 (1983). Similarly, in Southern, unlike the case at hand, the applicant met the requirements of the ordinance. After mentioning that fact numerous times throughout the opinion, the court focused on the "narrow question" of whether an additional requirement could be considered which was not included in the ordinance. The court held that any discretion which the County Commission may have had to deny an application "vanished" when the "property owner had done all the law required of him." Southern, 1696 F.2d at 1352. But here, due to the failure to meet the legal requirements, the petitioner does not have a constitutionally protected property interest under §1983.

Even if the United States Supreme Court determines that the constitutionality of the council's decision must be reviewed, it was not arbitrary and capricious. In Scudder v. Town of Greendale,

Ind., 704 F.2d 999, 1002 (1983), the court defined "arbitrary" as a decision was reached "without adequate determining principle or was unreasoned." Id. In Scudder, a requirement of the ordinance was "that every building hereafter erected shall be located on a lot which fronts on a street." Id. at 1003. The court granted the city summary judgment because the lot upon which the plaintiff desired to build did not front a street. Id. The Scudden court held that strict enforcement of an otherwise valid city ordinance was not "arbitrary". Id. Although petitioner relies on this case in its argument, it is obvious that the case supports respondent's argument. In the case at hand, the City Council determined that certain BOCA requirements were not met because petitioner failed to provide enough information. (App. A, p. 53) The Trial Court appropriately found that the council was only requiring compliance with all city ordinances.

The plaintiff relies on Bello v. Walker, 840 F.2d 1254 (3d Cir. 1988), stating in its Petition for Writ of Certiorari that the case

is "a particularly worthy discussion on the issue of arbitrary and capricious." (Petitioner's Brief p. 25). Again, this decision is absolutely distinguishable from the case at hand. First, the council did not claim that the applicant had failed to meet the legal requirements of the ordinance. Second, the Bello court remanded the case for factual findings since plaintiff had alleged facts from which the fact finder "could reasonably conclude that certain council members . . . improperly interfered with the process by which the municipality issued building permits." Id. at 1129. The court concluded that the crucial underlying issue of the municipality's decision is "the factfinder's role to resolve." Id. at 1130. In this case, the factfinders resolved the issues and determined that Respondent Despain acted rationally.

Plaintiff argues that " . . . any objective reading of the transcript of that [Council] hearing of July 20, 1981, indicates that compliance with the ordinances of the City of Collinsville was not the primary motive for the decision of the Council." (Petitioner's

Brief, p. 30) But as Respondent Despain articulated at the time the vote was taken, he was motivated to vote against granting the building permit because of the evidence introduced at the hearing that petitioners had failed to comply with legal requirements. (App. A, p. 54) The petitioners failed to comply with certain BOCA codes and regulations and the petitioners failed to appeal the denial of the building permit in a timely fashion. (App. A, p. 54)

Nonetheless, plaintiff goes on to claim that there was no evidence of BOCA code violations presented at the council meeting. (Petitioner's Brief, p. 30–31) This simply is not true. At least two deficiencies were discussed: Failure to describe the use of the building and failure to disclose the names of the officers of the corporate applicant. (App. A, pp. 5–20, 25–44; 12, 13) Certainly, not every member of the city council can be expected to be an expert in what the BOCA code requires. But, when the mayor pointed out these areas of deficiency in the application at

the council hearing and reminded the petitioners about failed to attempts to ascertain the data, the petitioners' witnesses did not deny that BOCA required that they supply that information, nor did they deny that representatives of the city had been thwarted in their attempts to obtain that information at least until the time of the council meeting. (App. A, p. 12–14)

Finally, it might also be noted that the plaintiff is inviting a situation in which every routine local building code decision may become subject to prolonged federal constitutional litigation. The U.S. District Court for Northern Illinois, in Christian v. Village of Maywood, 656 F.Supp. 367 (N.D. Ill. 1987) has properly stated that, "We also point out to plaintiffs that a building code dispute is ordinarily 'a matter of peculiarly local concern' in which a viable federal claim is rarely found." (656 F.Supp. at 370), citing Albery v. Reddig, 718 F.2d 245 (7th Cir. 1983).

In conclusion, the Appellate Court correctly found that the §1983 claim need not be considered because the evidence

supported Respondent Despain's action of denying plaintiff's permit based on BOCA violations. Even if the U.S. Supreme Court decides to address the constitutional issue, Respondent Despain's decision was not arbitrary and capricious because of the obvious ordinance violations and the petitioners repeated refusals to supply the City with the missing information.

ARGUMENT II

THIS COURT NEED NOT ADDRESS PETITIONER'S DUE PROCESS ARGUMENT SINCE PETITIONER FAILED TO SEE THAT THE ISSUE WAS "PRESSED OR PASSED" UPON THE ISSUE IN STATE COURT.

Petitioner alleges that Mayor Brombolich's original denial of the building permit on March 23, 1981 was based on reasons other than the BOCA Building Code violations. (Petitioner's Brief p. 36). Petitioner alleges that it did not receive notice that the application had been denied on the basis of any alleged BOCA defects in the permit. (Petitioner's Brief p. 39). Petitioner alleges denial of due process because of an alleged failure to receive notice

of the specific BOCA violations at the administrative appeal to the City Council. (Petitioner's Brief, p. 39).

The United States Supreme Court should not even review the due process issue. The United States Supreme Court will not decide claims "not pressed or passed upon" in the state court. Illinois v. Gates, 462 U.S. 213, 76 L.E.2d 527, 536, 103 S.Ct. 2317 (1983). The longstanding rule that the Supreme Court will not consider such claims creates, at the least, a weighty presumption against review. Health v. Alabama, 472 U.S. 82, 88 L.E.2d 387, 393, 106 S.Ct. 433 (1985). In Gates, the state court had held that an application for a warrant to search was inadequate. Id. at 534. In their brief to the United States Supreme Court, petitioners for the first time addressed the issue of whether the exclusionary rule should be modified. Id. at 535. The Supreme Court held that it could not decide issue because it was not "pressed or passed upon below." Id. at 538. Among other reasons, the court noted that questions which were not raised below were very likely to have an

inadequate record, and that due regard must be given to the state court. Id. at 537.

Likewise, in the case at hand the first time the issue of lack of due process for failure to receive notice was raised was in the petition for rehearing to the Illinois Court of Appeals. No mention of this issue can be found in the decision of the Trial Court, in the notice of appeal, the briefs, or on the decision of the Court of Appeals. The general practice of the Illinois Court of Appeals is not to consider issues for the first time on appeal. Western Gas & Sur. Co. v. Brochu, 86 Ill.Dec. 493, 475 N.E.2d 872, 105 Ill.2d 486 (Ill. 1985).

When the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to lack of proper presentation in the state court unless the aggrieved party in this court can affirmatively show to the contrary. Bd. of Dirs. of Rotary Int'l. v. Rotary Club, 481 U.S. 537, 95 L.E.2d 474, 487, 107 S.Ct. 1940 (1987). In Rotary the appellants claimed a

federal statute was unconstitutionally vague and overbroad. Id. at 487. Appellants did not present the issue squarely to the state court until they filed their petition for rehearing with the Court of Appeals. Id. The Court of Appeals denied the petition without opinion. Id. The California Supreme Court denied appellants' petition for review. Id. at 483. The United States Supreme Court declined to review the question because the appellants made no showing that the omission was not due to improper presentation in the state courts. Id. at 437.

Likewise, in the case at hand, the petitioners did not present the issue of denial of due process due to lack of notice squarely to the state courts until they filed their petition for rehearing with the Illinois Court of Appeals. The Court of Appeals denied the petition without opinion. Likewise, the Illinois Supreme Court denied appellants' petition for review due to the fact that petitioner has not shown affirmatively that the issue has been passed or pressed upon by state court, the United States Supreme Court

cannot review the issue.

Besides, petitioners did have notice of the local code violations. In his letter of March 23, 1981 Mayor Brombolich sent a letter to Dr. Escobedo denying the permit in part because the city was unable to discover pertinent information that was missing from the face of the application. (Petitioner's Brief, App. 46) Of course, it is the BOCA provisions which require, in part, that certain information appear on the building permit application including data identifying information about the owner of the property and the identity of the officers, if the owner is a corporation. (App. A, pp. 12,13) Moreover, no statute or ordinance required that the mayor notify the applicant of all bases for denying the permit. Certainly, there is no constitutional duty to do so. Obviously petitioners were not too concerned about their application deficiency since they made no effort to contact the building inspector, the mayor or any other member of the City Council in an attempt to determine exactly what was wrong with the

application.

Moreover, as regards the Respondent Robert Despain, he certainly cannot be faulted for any failure to give the petitioners notice of the BOCA code violations prior to the council hearing. Respondent Despain had absolutely nothing to do with the denial of the building permit application or with notifying the petitioner of the reasons for the denial.

ARGUMENT III

A. THIS COURT NEED NOT ADDRESS PETITIONER'S ARGUMENT THAT THE COUNCIL HEARING SHOULD NOT HAVE BEEN A DE NOVO PROCEEDING SINCE PETITIONER FAILED TO SEE THAT THE ISSUE WAS "PRESSED OR PASSED" UPON IN STATE COURT.

Petitioner alleges that the City Council's sole function was to determine whether Mayor Brombolich's decision was contrary to the manifest weight of the evidence (Petitioner's Brief p. 40). Petitioner alleges that the only evidence which can be considered

by the City Council was Mayor Brombolich's alleged reasons for denying the permit, and not any building code violations. (Petitioner's Brief, p. 40)

This is the first time petitioner raises this argument. For the reasons set forth in Argument II of Respondent's Brief, this Court should not review the issue of whether the Council should have considered evidence not relied upon by the mayor. Whether proceeding with a de novo hearing was appropriate pursuant to administrative law was not directly "pressed or passed upon" in the state court. Illinois v. Gates, 462 U.S. 213, 76 L.E.2d 527, 536, 103 S.Ct. 2317 (1983).

B. THE COUNCIL PROPERLY PROCEEDED WITH A HEARING DE NOVO.

Petitioner misstates the law in City of Rockford v. County of Winnebago, 134 Ill. Dec. 246, 253, 542 N.E.2d 423, 186 Ill. App. 3d 303 (1989), when he claims that the role of a reviewing body on administrative review is limited to a determination of

whether the agency's decision is contrary to the manifest weight of the evidence. (emphasis added) (Petitioner's Brief, p. 40). Petitioner argues that since the mayor's decision was based on something other than BOCA code violations, the City Council should not have heard evidence on code violations. (Petitioner's Brief, p. 41).

The proper interpretation of Rockford, 542 N.E.2d at 432 is that when a court reviews an agency's decision, the standard for review is whether the agency decision was contrary to the manifest weight of the evidence (emphasis added). In Rockford, the appellant appealed the decision of Winnebago County Board (WCB) to the Illinois Pollution Control Board (PCB) and then to the Court. Id. at 246. The Illinois Supreme Court held that the lower court's role was to determine whether PCB's decision was contrary to the manifest weight of evidence. Rockford did not address whether the appeals prior to reaching court are to be reviewed de novo.

To determine whether the City Councils' review of the mayor's decision is de novo or by the manifest weight of the evidence, one must look to the statute giving the council authority to act. An agency, being a creation of statute, has only those powers specifically conferred on it. Reiter v. Neilis, 81 Ill. Dec. 110, 113, 466 N.E.2d 696, 125 Ill. App. 3d 774 (1984). For example, the Industrial Commission must allow new evidence to be introduced upon review as stated in its statute. Cole v. Industrial Comm'n., 116 Ill. Dec. 866, 519 N.E.2d 1081, 166 Ill. App. 3d 406 (1988). However, the Illinois Human Rights Commission must accept a hearing officers findings unless it is contrary to the manifest weight of the evidence. Board of Regents v. Human Rights Comm'n, 142 Ill. Dec. 632, 552 N.E.2d 1373, 196 Ill. App. 3d 187 (1990).

The Collinsville Municipal Ordinance §16.20.010 does not provides that "any person not satisfied with the decision . . . may appeal within five days to the council. . . . The city clerk

shall present the appeal at its next regular meeting. The council may affirm or reverse, correct or remand the decision so appealed." Since the ordinance does not specifically state the nature of the review, whether de novo or manifest weight of the evidence, the appeal is deemed to be de novo. 17 Amber 2d Administrative Law §546 (1962). Moreover, since powers of the council on appeal are quite broad, it makes sense that the council review would be de novo.

ARGUMENT IV

THE FINDINGS OF THE LOWER COURT HAVE A BASIS IN FACT.

Petitioner complains that the Illinois Supreme Court and Illinois Court of Appeals "misapprehended or misconstrued" key facts. However, the facts relied upon by the courts of appeal were appropriately determined from the record. Petitioner first criticizes the Court of Appeals assessment that, "The City was unable to discover pertinent information missing from the face of the

application." (Petitioner's Brief, page 42) The mayor's letter of March 23, 1981 explained that the information contained in the application was inadequate, and that the city was unable to discover the information. (Petitioner's Appendix D, pages 46 – 47) The mayor noted as follows: "Investigation conducted by the City concerning the factual information contained in the application has been met with resistance, which includes lack of knowledge, repeated referrals to other people who have little or no knowledge, outright refusal to answer legitimate inquiry . . ." In addition to the mayor's letter the Court of Appeals also had the testimony of the witnesses appearing at the council hearing on July 20, 1981. At that time, there were lengthy discussions about the failure of the application to adequately describe the proposed use of the building as well as missing information as to the identity of the owners. Thus, the Court of Appeals certainly did not misconstrue the facts as indicated by the record.

Petitioner claims that the Court of Appeals misstated the

facts when it found that Dr. Escobedo repeatedly refused to supply the city with missing information. (Petitioner's Brief, page 43.) The record supports that there were at least several contacts with Dr. Escobedo and representatives of his corporation, Archview Investment Company, to get information concerning the use of the building and identity of the owners of the building. (App. A, pp. 12,13) Petitioner even conceded that there was an inquiry as to the ownership of Archview. Nevertheless, petitioner argues that the court should discount these inquiries because they were only made with respect to the first building application and not the second. This is not true. The inquiries were made after the second application was submitted. (App. A, pp. 12–13)

CONCLUSION

This Court should deny the Petition for Writ of Certiorari on the claims against the Respondent, Robert Despain. Mr. Despain's involvement in the denial of the building permit was

limited to assimilating the information provided at the council meeting on July 20, 1981 and doing his best to render a correct decision. A review of the transcript of that hearing leaves no doubt that the council members were presented with quite a bit of data upon which they could conclude that petitioners had failed to timely appeal the denial of the building permit and failed to submit an application that complied with the BOCA requirements. Regardless of whether the appeal was timely or had been waived, and regardless of whether there actually were BOCA code violations, Mr. Despain was certainly justified in believing this to be the case. Thus, his decision was not arbitrary and capricious but based upon evidence produced at the hearing. Moreover, Mr. Despain was the only council member who indicated that his decision to deny the building permit was not based upon the "emotional issues," that is, whether abortions would be performed

in the building. At a minimum, Mr. Despain is entitled to qualified immunity.

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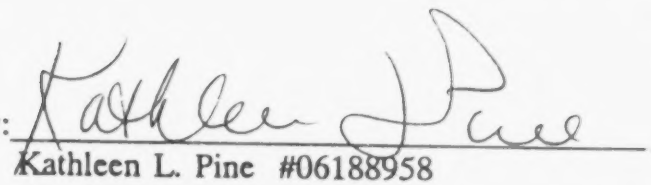
By: 

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Robert Despain

APPENDIX A

Mayor Brombolich opened the meeting with the Pledge of Allegiance to the Flag. Mayor Brombolich – The purpose of this meeting is an appeal of a decision to deny a building permit involving a facility on Pine Lake Road. I would like to make a statement as to how we are going to conduct this meeting. I would like to do this before any of the appeal. First of all this hearing the appeal of a City action will be treated as an argument as to why the petitioner appealing, believes the Office of the Mayor made some kind of error in decision to deny an application for a buiiding permit to Archview Investments Inc. The petitioner should specify the error and will be allowed to present his reasons why the council should overrule the Mayor. In doing this he can refer to those points of the evidence he believes to be material to his argument. The council members may question the person presenting the argument. After the person appealing makes his argument, any objecting views will be given a brief opportunity to present their side after proper identification. The chair reserves the right to restrict re – points of view. If objector's position is presented the person appealing will be given a short, will be given a short rebuttal period. The rebuttal does not include new or different issues, but is confined to rebutting new points raised in the objector's arguments. The council may vote at the end of the argument. At this time I would like to add anyone in the audience that plans to take part in the hearing – make any kind of testimony – to stand raise their right hand so I can swear them in. Secondly the attorney for the petitioner will not be required to be sworn in – because his side will not be testimony – but arguments. So anyone in the audience that plans to take part in this hearing by making a public statement if you will stand and raise your hand I will swear you in myself. Right now.

Commissioner DesPain – Mr. Mayor, do you think anyone who thinks its possible they may, that they should be sworn in even tho they don't plan to specifically.

Mayor Brombolich – Anyone that may possibly give testimony this evening, stand up raise your hand and I will swear you in.
"Do you swear that the testimony that you give will be the truth so help you God", Say I Do. Thank you. Is the petitioner ready to address the Council?
Yes – My name is Gary Apoian, I am an Attorney with offices located in East St. Louis, Illinois, I represent Archview Investments Inc. As the gentleman has already stated, this is an appeal before the City Council based upon my client submitting an architectural plan for a building located at the intersection of Pine Lake and Vandalia which is also Highway 40 I believe. This area of the proposed building is located in a B–1 zoning district. I would state to the council that on the 10th day of March, 1981 Archview Investments Inc. submitted a plan, the application was secured from the City Clerk it was prepared, various plans, architectural drawings were attached, prepared by Mr. Thomas Hall who is present tonight and has been sworn in. Various structural drawings were also prepared under the direct supervision of Mr. Hall. It is our position tonight in reviewing both Chapter 16 of the Collinsville City Ordinance and Chapter 19 of the Zoning Ordinance that all the plans which were submitted together with the application were in strict compliance and conformity with the Ordinance and we are well aware of the fact the Ordinance, as it pertains the particular Chapter 16 makes reference to BOCA building codes and other pertinent building codes of the City of Collinsville would adopt. At all times we complied with those building codes, we submitted the plans together with the architectural drawings and structural drawings. On March 23rd, 1981 the Mayor of the City of Collinsville declined to issue the building permit. It is our position here tonight, after reading the pertinent provisions of the Ordinances of the City of Collinsville that the only basis for denying that building permit would be –. A. that we were not in conformity with the proper zoning which in this case was B4, or secondly – that the architectural and structural

drawings were not in conformity with the existing building codes which the City of Collinsville has adopted. In the Mayor's denial letter which is attached to the appeal which we filed before this body and is Exhibit #1, in that denial letter nowhere does the Mayor state that the reasons for the denial are that we do not comply with the zoning, altho there is language in the Exhibit that would indicate that he was refering to zoning types of situations. We have reviewed Chapter 19, which involves zoning, we have doubled checked and rechecked and we were in conformity with the zoning provisions. Nowhere in the Mayor's denial letter which is dated March 23rd, 1981 does he state that the reasons for the denial of the permit was that we did not conform with the existing building permits - the BOCA provisions. Archview Investments Inc. hired Mr. Thomas Hall who is a certified architect and engineer, he followed the procedure which he has followed in many instances where he has been employed to prepare building plans and attempt to receive building permits. And after conference with him we still could not find any problem with our permit or our plans. It is our position that the denial of the permit by the Mayor was improper at least - at least we would be entitled to know why we were denied as it pertains to the existing ordinances of the City of Collinsville and it is our position that it is only those reasons - those reasons alone that can be the basis for denying the building permit in this case. One other thing I would like to point out that I passed over - that the plans and it is my understanding this was confirmed both by letter and telephone and the plans so specify, that the purpose stated in the building permit was to have a building erected and that building would be a medical building. I would point out to the council that the Zoning B-4 is inclusive of other lesser zoning provisions and I would point out that would include B-2. And I would direct the council's attention to Page 2-77 which states the uses would include but not limited to the following and one of those subheadings is medical facility. It is our position that we have been in compliance - strict compliance

with the ordinances and that accordingly the building permit should have been granted and the Mayor's decision should be overturned by this council.
Mayor Brombolich – Mr. Appoian do you have anyone that would like to address the council?
Mr. Appoian – Yes I would ask that Mr. Tom Hall rise, I would like to ask him some questions.
Mayor Brombolich – Please Mr. Hall now is the time.
Mr. Apoian – Would you state your name please?
Yes – Mr. Thomas Hall.
Mr. Apoian – What is your occupation Mr. Hall?
Mr. Hall – I am an architect.
Mr. Apoian – Are you familiar with Archview Investments Inc.?
Mr. Hall – Yes, sir.
Mr. Apoian – Were you engaged by Archview Investment Inc. and when were you engaged by them?
Mr. Hall – In early 1980.
Mr. Apoian – And what was the purpose of your employment by Archview Investments?
Mr. Hall – To design a medical office building.
Mr. Apoian – Exactly – can you tell the council members what you did to effectuate the wishes of your employer?
Mr. Hall – We followed basically standard procedure that we do in the firm in terms of gaining zoning, building code information obtaining the criteria necessary for the design both from the City's point of view and the client's point of view and correlating that material into a project. We try to research the necessary zoning requirements, zoning code requirements, fire district requirements and design our building to conform with those.
Mr. Apoian – In conducting your research did you make yourself acquainted with the B4 zoning district of the City of Collinsville?
Mr. Hall – Yes I did.
Mr. Apoian – And were you certain that the plans that you prepared were in conformity with each aspect of the B–4 zoning

requirements?
Mr. Hall – Yes they were.
Mr. Apoian – And could you tell the council, exactly, how you made sure they were in conformity with those provisions?
Mr. Hall – Essentially just by researching and also by previous experience of knowing the facilities that are allowed within that zoning and it was very specifically – we checked with the City records to find that zoning and the people that we were buying the property from verified that zoning and then correlated that with permissible usage.
Mr. Apoian – In your work were you cognizant of the BOCA provisions and other standards and were they so met.
Mr. Hall – they are.
Mr. Apoian – After the time of preparing the plans, what did you do next?
Mr. Hall – Upon the completion of the architectural and structural drawings submitted for a voting.
Mr. Apoian – And how did you do that?
Mr. Hall – By appearing at City Hall and asking them and filling in that application and leaving with them a set of architectural and structural forms.
Mr. Apoian – After that was done were you contacted by anyone from the City?
Mr. Hall – No we were not.
Mr. Apoian – Did anyone from the City ever contact you at all with regard to your plan both architectural and structural were not in complaince with BOCA provisions?
Mr. Hall – No one ever contacted me in regard to the set of plans.
Mr. Apoian – Let me ask you this question, If they had, would you have made an effort to remedy those decisions?
Mr. Hall – Oh absolutely, the typical are that we submit whatever we are doing, the project is reviewed by the pertinent authorities, we are contacted as to any violations that need to be corrected in the building plans, we meet with whatever personnel

is necessary, make the necessary corrections and resubmit the drawing.

Mr. Apoian – that is all I have at the moment.

This is the correct one then, you testified you were contacted by _____.

Mr. Hall – It was originally in 1980 – late 1979 or early 1980.

Mr. Apoian – Thank you. We would have nothing else to present at this time.

Mayor Brombolich – Does the council have any questions of Mr. Apoian or Mr. Hall?

Commissioner Pamatot – Mr. Hall are you a licensed architect in the states of Illinois and Missouri?

Mr. Hall – Yes sir, I am.

Mayor Brombolich – Mr. Hall the application and the building plans that were submitted to the City by Archview Investments in March, 1981, are those the same plans that you submitted, or someone submitted for Dr. Escobedo in October of 1980?

Mr. Hall – Essentially, with more detail and they were more of a complete set of plans, but essentially yes.

Mayor Brombolich – I might ask Mr. Apoian, the letter from me dated March 23, in the second paragraph, "Investigation conducted by the City concerning the factual information contained in the application has been met with resistance, which includes lack of knowledge, repeated referrals to other people who have little or no knowledge, outright refusal to answer legitimate inquiry, the use of a secretary without financial interest as incorporator, etc." And you say that you have met all regulations under the BOCA code, in Section 111 of the BOCA Codes under applications for permit, section 111.3, By Whom Application is Made – Application for a permit shall be made by the owner or Lessee of the building or structure or agent of either, or by licensed engineer or architect employed in connection with the proposed work. If the application is made by persons other than the owner, it shall be accompanied by a duly verified affidavit of the owner or a qualified person

making the application that both work is authorized by the owner and that the applicant is authorized to make such application. The full names, addresses of the owner, licensee, applicant, and responsible officers if the owner or licensee is a corporate body shall be stated in the application. You deny that we tried to find out who the officers in the corporation were?

_____May I have a moment?

Mayor Brombolich – Please.

_____While we are looking thru our file, I would say this that when we prepared the application we were not told that this was applicable, however with regard to your inquiry, Archview Investments is a corporation and all that information is ascertainable, a matter of public record and at no time did we conceal, or even think we were concealing that information from you or any other appropriate city official. If that is the problem, and again perhaps you did allude to that in your denial letter of March 23rd we stand ready willing and able to provide affidavits or any other information that this council or any other appropriate city official would want. We are not attempting to conceal anything whatsoever.

Mayor Brombolich – Let me continue under this Section 111.4 – Description of Work. The application shall contain the general description of the proposed work, its location and the use and occupancy of all parts of the building or structures and all portions of the site not covered by the building or structure and such additional information as may be required by the building official. Asking the intent by a direct phone call to Dr. Escobedo and trying thru our police department we were denied any answer as to the intent of the building and as BOCA Code clearly states that the Building Commissioner the person responsible does have that information – and is the type of information that should be given to him. Can you answer what is the intent of the proposed building?

Mr. Apoian – Yes, very clearly. It will be the intent – it will be

a medical building, it will be rented to other medical people, there may well be a pharmacy, but the intent is it will be a medical building, that's been our intention, it still is our intention, that was specified in the application and I don't think we can be any clearer than that.

Mayor Brombolich – The application from Dr. Escobedo in October, 1980 stated the purpose of the building will be a medical facility, the application by Archview dated March, 1981 said a multi–tenant office building. I consider that two differing types of poles applications of the building. Is your facility a medical building as you are stating now or a tenant office building as you stated in your permit?

Mr. Apoian – If the Mayor would look at the plans that were submitted with the letter of application the plans were very clear that the proposed building was going to me a medical building.

Mayor Brombolich – but the application denotes what the purpose of the building is and its listed as a multi tenant office building.

Mr. Apoian – Perhaps the misunderstanding is our fault, but we believe that if taken as a whole the application together with the architectural drawings etc. taken as a whole, make it quite clear that the purpose and intent was that a medical building would be constructed.

Commissioner DesPain – Could you give any reason as to the confusion why you would call it one thing one time and multi tenant office building the second time – why wouldn't you attempt to be more clear than what you were?

Mr. Apoian – We apologize if we left an ambiguity there, I can offer no explanation other than the fact that if you look at the application and plans that were submitted as a package, the intent is clear that it was a medical building and if there is any confusion or misunderstanding here tonight I would reaffirm that before this audience, that the present intent is that we would seek permission to erect the building and use it for a medical facility.

If I may Mayor, Mr. Hall is here and you can ask him of the intentions that were expressed to him in regard to the proposed ??
Mayor Brombolich – Mr. Apoian my point is that you stated previously that there was not any reason given and I think I stated very clearly in the very first paragraph the reasons for the denial it was met with resistance and as far as I am concerned the BOCA Code states that you have the applicant has the responsibility to state the exact intent and not has the duty to state intent of the use of building and it still hasn't as the application shows now, and I tried to make inquiries of the intent of the building and it was met with resistance and no information, as far as I am concerned saying "general practitioner or dentist" is not, as far as I am concerned, with the background of one of the persons involved with the corporation, is still not sufficient. And I want to know if it is a office building or if it is going to be a medical facility,w hat type of doctors do you propose to have as tenants in this building?
Mr. Apoian – It will be a professional building, a medical building, doctors of various fields of medicine will be permitted to secure space from the corporation. By medical building it would cover the whole gamut of specialties general practitioner, dentist.
Mayor Brombolich – Mr. Apoian, let me approach that in a different way, with the background of Dr. Escobedo, with the original application in October, and the subsequent use of his address in his clinic on Manchester Road as the mailing address for the application of the Illinois Corporation, with Dr. Escobedo's background is the intent to bring any other practitioners from Missouri or anyone in that line that advertises in the yellow pages as far as abortions performed etc. is it the intent to have those types of facilities and those type of doctors involved that he is associated with in Missouri?
Mr. Apoian – Rather than me speak for the doctor if the Mayor would like address the question directly to the doctor.
Mayor Brombolich – Remember that conversation by phone a number of months ago and I asked you the intent of your building

the intent of the users what type of facility would be there what type of doctor would be there and my last question of which you refused to answer and you referred me to your attorney the last question is – will your associates in your business in Missouri or people in the like type of profession be involved in the facility in Collinsville, namely abortionist, and you refused to answer that question at that time? Can you tell me now will you or will the facility involve people of that nature?

Dr. Escobedo – Well, my thoughts ever since we legally presented request for a permit has been to build a medical building.

I don't recall the conversation – but I think I said –

Mayor Brombolich – Again, because of your association in Missouri clinic and your association with practioners involved in the medical field of abortionists and things of that nature, would you foresee any of those types of physicians being involved in your clinic locally?

Dr. Escobedo – My present plans are to put a medical building in this place.

Mayor Brombolich – Thank you, doctor.

Commissioner DesPain – Mayor – doctor – Is it intended that this facility will be licensed as an ambulatory surgical center by the State of Illinois?

Dr. Escobedo – My plans are to put a medical building up. --

Commissioner DesPain – Did you understand my question, it was a direct --

Dr. Escobedo – At the present time I only plan to put up a medical building.

Commissioner DesPain – You do not have an application at the present time to the State of Illinois for an ambulatory surgical facility?

Dr. Escobedo – I do not.

Mayor Brombolich – Let's move on to another area. Anytime a council member wants to jump in – please do. My letter dated March 23, 1981, you mentioned that date as the date the letter was

submitted at least typed and sent out by this office. We also received an appeal on April 6th, do you concur with those dates, the appeal to the City Council we received it on April 6th?
Mr. Apoian – What ever your records show.
Mayor Brombolich – Under the Collinsville Municipal Code Section 16.18.010 Procedures of Appeals – Any person not satisfied with the decision or action or failure to act of any officer on an application for permit or for inspection or for approval or for any other administrative function in your administrative procedure provided in this chapter may appeal in 5 days to the council. This appeal shall be in writing filed with the City Clerk, and shall state briefly the alleged error in the decision or action or failure to act; the City Clerk shall present the appeal to the council at their next regular meeting, the council shall affirm or reverse to correct or remand the decision so appealed. The date of March 23rd and we received the appeal on April 6, is more like 14 days. In fact is exactly 14 days. Now very clearly, in our municipal code it calls for an appeal to take place within 5 days. Do you have any comment on that please?
Mr. Apoian – Yes sir, Mayor, first of all, if I can address myself to Division 16 if we read that in its entirety it is our position that the Mayor is not the proper party to deny an application for a building permit. Secondly, if I may, when we received your letter of March 23, 1981 it was our opinion in reading the letter as a whole the reason for denial was zoning type problems. And accordingly we perfected our appeal before the Zoning Board of Appeals pursuant to Chapter 19, which is the Zoning Ordinance. Pursuant to the Zoning Ordinance our appeal before the Zoning Board of Appeals was and that appeal was to be held in June, June 23rd if I am not mistaken. On June 22nd or 21st the exact date escapes me, I communicated with the Corporation counsel after receiving your second letter of April 15, 1981, and I might add that we didn't receive that on April 15 or 16th, it got to us quite late, why I don't know, but at any rate your letter of April

15, 1981 is attached as Exhibit 2 of this appeal indicates that the proper jurisdiction of the Board of Appeals was on Zoning matters, which signaled to me that in your initial letter denying the building permit that you were denying it not because of a zoning problem but because of something else. So in communication with the Corporation Counsel, we were of the opinion, he was of the opinion that this is not a zoning problem and the appeal which was previously filed before the Zoning Board of Appeals be continued. And brought before the City Council to take up whatever reasons this body and you in particular had for denying the building permit. It was also discussed with regard to the 5 days rule in Section 16 of which you have just referred that that would begin to run after our June 23rd meeting before the Zoning Board of Appeals, and accordingly on June 24th I filed the appeal which is presently before this body, I would state further that provision Section 16.20 concerning appeals does not state may appeal within 5 days to the council – it does not state within 5 days from what action. So essentially when we were before the Zoning Board of Appeals back in June 23, I believe, we were of the opinion to expedite matters to bring this appeal before this body, because as a practical matter should we have not received the week from the Zoning Board of Appeals we would have appealed before the body anyway.

Mayor Brombolich – I think we are getting some timing, the letter that we are referring to on March 23rd and received an appeal marked April 6 and you stated the reason that appealed to the Board of Appeals and you thought it was a Zoning matter and it wasn't appealable to the City Council because it was a zoning matter. It was a very short letter, let me read it and you can tell me how you could interpret it as being a zoning matter. The City denies to issue a Building Permit pursuant to the above application. Investigation conducted by the City concerning the factual information contained in the application has been met with resistance, which includes lack of knowledge, repeated referrals to other people who have little or no knowledge, outright refusal to

answer legitimate inquiry, the use of secretary without financial interest as incorporator, etc.
As Mayor of the City, I feel that it is not in the best interest of the City to issue the permit.
It is my belief, based upon application and the investigations conducted by the City, that the applicant i attempting to conceal from the citizens of Collinsville the real use for which the building is intended, and that the applicant is causing an additional financial expense upon the taxpayers of the City by failing to cooperate in the investigations. If in fact the building is to be used for an abortion clinic, it would be contrary to the general health, safety and welfare of the public to issue the building permit. Signed by myself. Where do you interpret anything in her to be involving zoning?
Mr. Apoian – Well, if I may under the Zoning Ordinance under which we were aggrieved were to go before the Zoning Board of Appeals in construing your March 23rd letter it indicates to me, that we were almost in, as you term a Special Use situation under B4 which proven you were not, and if your honor would refer to Section 1-12 Special Uses I won't read the entire thing. Considerations in granting Special Uses it states this Ordinance divides the entire City into districts and in each district there are mutually compatible uses which are permitted. It is recognized however, that other uses may be necessary or desireable but their potential influence or permitted uses could be harmful In other words what that is saying is that basic ground work as to zoning in general the municipality can determine the health welfare etc. in creating zoning districts. In your letter of March 23rd that indicates that may be one of your reasons, we were not really sure, because there is language in her as to creating a problem etc. and we interpreted that as being a zoning problem. Possibly your honor was interpreting our request as a Special Use which it clearly was not the situation under the zoning code. But, all that aside, it has been our position from the very beginning as it is now that the

denial letter of March 23rd, is improper whether we go under Section 19 of the Zoning Code or whether we go by Section 16. The Ordinances under both provisions clearly specify the reason for denial and if the reason stated in your letter of March 23rd are not in conformity with the Ordinances. Mayor Brombolich – I believe that in the discussion of the BOCA Code in requiring petitioners to give information as to the use, as to the officers in the corporation, was the reason for the beginning paragraph. The last paragraph indicates what I feel, as an officer in the community, would be the problems with such a facility, if the facility would be an abortion clinic. No where did I indicate it would be a zoning matter, in fact, once the appeal came in 14 days after the denial was issued, which is not in accordance by our municipal code which requires a 5 day period, after that there wa another letter sent out that I sent to the Archview Investment again. "It has been brought to my attention that you have filed a Notice of Appeal to the Zoning Board of Appeals from denial of Building Permit. So that you will not be misled, please be advised that the jurisdiction of the Board of Appeals is limited to matters of zoning. While the zoning ordinance has sections relating to Building Permits, other local ordinances relating to Building Permits are contained in the Collinsville Municipal Code, Division 16. The Code Division 16, requires, among other things, that the Mayor approve all building permits (Section 16.12.050). This division also adopts the BOCA Building Code for the City and said building code contains requirements regarding building permits.

The City will interpret any order issued by the Board of Appeals a being limited to zoning matters.

However, so that you will not be denied any remedy that you choose to pursue in this matter, your appeal is being processed in the usual manner".

I think what we are telling you is that it is not a zoning matter. Still you decided to appeal to the Board of Appeals – not the City Council and not within the time limitations as restricted by our

City Code. This is my point that I am trying to get across right now.
Commissioner Giflotto – I would like to ask Dr. Eacobedo a question. Doctor, do you plan yourself to have an office in this building?
Dr. Escobedo – I do not plan at this time.
Com Giglotto – At anytime at all?
Dr. Escobedo – At present time I don't plan – I have my practice in West County. In St. Louis,
Co. Giglotto – And what happens, if you decide, we will say, to move?
Dr. Escobedo – I am very busy in St. Louis, I got no time to come here.
Com. Giglotto – If, If – If you took up residence in this building, and a woman came to you and asked for an abortion, would perform that abortion, in that building?
Dr. Escobedo – Well – I cannot answer that question.
Com. Giglotto – Why not? Are you a doctor?
Dr. Escobedo – I don't practice here, too.
Com. Giglotto – I said, if you were in the building and a woman came to you and asked for an abortion, would you perform that abortion in that building?
Dr. Escobedo – Sir, I am an obstetrician and gynecologist and I would provide any service required for any woman that would come to me as long as it wa according to the law. --
Commissioner Giglotto – That's all I have right now.
Mayor Brombolich – Mr. Apoian, In trying to investigate in trying to arrive at what the facility would be used for and by who – and who is the owner, there was some inquiries made and I would like to read a little bit of the input I received. This was dated March 18, about the application for a building permit. On March 18, Attorney, Betty Cooper of 7751 Carondelet, Clayton, Missouri representing Archview Investment Inc. contacted me regarding information I requested on March 13, 1981. He advised that the

incorporator of Archview Investments Inc. is his secretary, W. Braun 12150 Eperney Court, Maryland Heights, Mo. who has no financial interest in the corporation. He also advised that as an Illinois Corporation formed January 28, 1981 with Attorney, Cary Apoian, 110 North Main Street, East St. Louis, Illinois as a registered agent. He further advised that the correspondence mailed to 13979 Manchester Road St. Louis, Mo., that the corporation would receive the mail but he would not disclose the identity of the person receiving the correspondence. Mr. Cooper also would not disclose the name of the corporate officers or would reveal that a Dr. Escobedo was associated with the corporation, this wa a memo to me from Detective John Swindle from our local police department. This is exactly the type of corporation and referrals we had and denial of the very sincere request to find out who owned the corporation, what type of facility it was going to be, that was met with resistance all along. And it was the main objections and the reasons that was stated in the application denial of March 23, 1981.

Mr. Cooper – I have represented Dr. Escobedo in the past, most of what you said I agree with. The gentleman that called me identified himself as Detective John Swindle I think that was the correct name, of the Collinsville Police Department. To begin with I have been practicing in Missouri, I am not licensed to practice in Illinois, since about May of 1957, I have been involved in similar matters involving real estate etc. and I have never, nor has anyone in my office ever had a police officer call us in connection with a zoning matter, application for a permit, anything involved with the development of real estate. So I found that extremely unusual, however, everything you said up to about, just concur with the things you said. Debra Brown is my secretary I told him that, I told him that she has no financial interest that is correct. I told him – I don't know if you said it or not, I couldn't remember, I told him when the corporation was formed I gave him the date, I told him it was an Illinois Corporation and what you didn't allude to

was that I told him he could confirm all this by checking in Springfield, because that is where it is on record, as Mr. Taylor well knows. I advised him of the name of the registered Agent, his address, all of which is on record, I did not disclose him the names and addresses of all the officers, he asked me and I told him that I would have to consult with my client before I give out that information. But that is not unusual because I didn't know why that detective was calling, so as an attorney representing a client I had no reason to believe there wa any reason for him to know that, as it turns out, you knew anyway and we have never hid from you that Dr. Escobedo has an interest in this corporation. Mayor Brombolich – That is the first I knew that he had an interest. – Please Mr. Cooper – I know that I am not in a friendly crowd here but at least give me an opportunity to be heard. I have never heard of a detective calling up for something like this. If you were my client Mayor, and the same thing happened, and I don't know what you were going to put up in the way of the detective also found it strange that the application for the building permit listed as a mailing address the owner's address 139775 Manchester. I told him that was because the piece of property that the client had purchased was a raw piece of land in Illinois and there was no address and there was no post office box in Illinois other than Mr. Apoian's office and of course I had given them that address. He found that very strange to, he found it strange that an Illinois Corporation wouldn't have a mailing address in Missouri, and then he found it strange that an Illinois resident might own stock in a corporation that was authorized to do business in Illinois and that was formed in Illinois. I didn't tell him what I am about to tell you, because there was no need in discussing that.

Mr. DesPain – Do you want to clarify? – I believe you said Illinois resident. Mr. Cooper – No. I'm sorry it's Missouri. He found it strange that a Missouri resident might – he wasn't sure who the Missouri resident was – but I knew then that he knew more than he put on to know – he said that he found it strange that a

Missouri resident would own stock in a corporation formed in Illinois and authorized to do business in Illinois, of course as all you gentlemen know anyone who owns stock in a publicly owned corporation whether it be AT&T or anything else, you are not residents of whereever it is incorporated, presumably in New York or Delaware. But as far as what you said, except for that explanation Mr. Mayor, what had been reported to you was correct. May Brombolich, I don't know what is so unusual about a detective in the Police Department of a local community investigating or substantiating facts or lack of facts on the application, it is not unusual for the City of Collinsville and not unusual for me, I might go a little further showing or trying to show that we were trying to arrive at some of the facts that we needed to process the application. Another memo dated March 13 from Detective Swindle to me Mr. Cooper – You said the 13th, that conversation I just alluded to took place on March 18th.

Mayor Brombolich, This one is March 13th where he calls attention to talked to Mrs. Katz, a secretary at Fleischer–Seger Construction Co. at 5725 Manchester Road in St. Louis, stating her company owned and managed Regency Park Medical Center whose address 13975 and their records revealed that the company by the name of Archview Investments Inc. was not a tenant in the complex located at 13975 Manchester Road, the application address is the corporate headquarters or address. Gene Balazey, nurse at Dr. Escobedo's office 13975 Manchester Road St. Louis County stated that she was not familiar with the Archview Investments Inc. and that she checked the directory posted in the building and the name was not listed in the directory. And it goes so on into contacting secretaries in Missouri and Illinois; what I am trying to say is that not was their conversation with you on the 18th but their conversation with secretary, the construction firm and the owner of Lamack Construction Company stated that he had been contact to construct a building on Pine Lake in Collinsville.

However, he did not know who the owner of the building would

be and was not familiar with the Archview Investment, Inc. He further stated he was working for the architect for the building, a Mr. Thomas Hall. Even the building construction people did not know who they were building the building for. This was the type of resistance that was met with our personnel from the Police Department, trying to arrive at the fats that as stated in the BOCA building code that should be immediately available to us, and we met resistance, and that it the reason, one of the reasons, for the letter of March 23, 1981. It is clearly stated, it has nothing to do with zoning it doesn't mention or refer to zoning as far as I am concerned.

Mr. Cooper – I can't answer what your investigation revealed. I don't know Mrs. Katz and I don't know the secretary you just mentioned, so I can't answer whether I would agree with what was reported back to you or not. If I may be so blunt, I really never understood after reading your letter, after checking the law, except for your obvious opposition as everyone else here has to anyone who may perform or be involved in abortion. I really never understood what difference does it make if we made you an officer of the corporation, or this fellow here or anyone here. What's the difference if the application for the permit, the plans and the purpose of the construction all comply with your law, what is the difference? I wouldn't care whether you were a secretary of a corporation or anyone here, what their background was, as long a they were in compliance with the law. How can you stand in judgement of other people? Mayor Brombolich – Mr. Cooper it is very simple, the City of Collinsville does not require a business license, I review all applications, business applications business and residential. That is our only means of overseeing what comes into the community. Nothing unusual has been done to you that has not been done to people in the pat or will be done in the future. That is the only way that I as the Chief Executive of the community receive input. If it is in the general walfare of the community, for this type of facility, at this location to be built. As such I sought

information as to who was building the building nd then whenever the application was changed and the corporation wa immediately formed before a similar application with a different purpose, even tho the plans were exactly the same, I though this was unusual and tried to investigate who was building it. If the original application of Dr. Escobedo's was being hidden by a corporation being formed, or if they actually wa a corporation using a different purpose for the facility on Pine Lake Road, and I was met with resistance. I am telling you to your face that nothing was done differently to you that has not been done in the past and will not be done in the future, as long as I sit in this chair.

Mr. Cooper – It seems to me that what this doctor wants to do will help the community. Now you just started one of the reasons you make these investigations is to, has something to do with finding out the stability of the corporation or the person that is going to build the building. I think that is what you are referring to. No one has asked me and I don't think he has asked you and I know he has never asked the doctor or Mr. Hall, #1 what he paid for the land? #2 I think the application for the permit, if it is a standard application does have a projected cost on it, no one has asked the projected cost, what you are going to put into the building, how it would enhance the value of the property, no one asked those questions, and you are talking about the stability of the person or persons or corporation building, those questions seem more pertinent than whether you or I are an officer of this corporation.

Mayor Brombolich – Mr. Cooper, because of the intent of this facility more so than the stability of the corporation is more important to me, because the intent and use for a couple of reasons. 1. If it is an abortion clinic or abortions are to be performed, I am familiar with what is taking place in Granite City. I am familiar with what is taking place at De. Escobedo's facility on Manchester Road thru input from St. Louis County Police Department. I have to take into consideration the problems of traffic, crowd control where demonstrators may be in the future, things like parking,

general public nuisance. These are the things I have to be concerned about if it is to be a medical facility, and if the medical center is to be used for something similar to an abortion clinic and the main reason is because of Dr. Escobedo's background. I have every reason to believe that his type of background is not going to change once he is in ownership or part ownership of a facility here in Collinsville.

_____ Mr. Mayor, what you jst said, is the reason that the appeal was taken to the Zoning Board rather than this body initially was because of the tone of your letter and there were about 5 of us that looked at your letter and none of us cold agree with what it meant, the only thing that we could assume was that if he was going to put a facility that would house an abortion clinic, that if he was going to do that, that was not within the zoning ordinance, that is the only way that could be read.

Mayor Brombolich – I don't see how you could interpret that, I read it once and I will read it again.

_____ Mr. Mayor do you think we would have ignored appealing under anything else, the man wants his permit he wants to build a building. He is not a lawyer he is not playing lawyer, he wants no more or less than if you wanted to build a home and someone denies you a permit. All he wants to do is get his building up if he can, he is not intentionally ignoring a part or parts of the law, so we looked at it and we saw only you talking about health and welfare and abortion is the only thing we could surmise, is that you are complaining about it not being in the proper zoning district.

Mayor Brombolich – Well, Mr. Cooper the only thing that I want the corporation to do is live within the laws that I live with, and the procedure is stated in the Municipal Code, and it is stated very clear and the only thing that I am referring to is that the appeal procedure did not take place during the proper timing and if I was trying to build a home I would appeal and I would appeal during the proper timing, as dictated by law and I am trying to bring that

point across.
Mr. Cooper – The chances are Mr. Mayor you would be more familiar with–than most people because of your knowledge of the ordinances, perhaps when you would appeal you would have got the direct reason from whoever, the powers may be that denied you the ampliation for permit, and as we read it first of all, please take this in the right sense, when we read the ordinance you didn't have any right to grant or deny it, I believe it was up to the Zoning Administrator under your office, and even under the ordinance to which you allude it doesn't say that you are the one that either denial (I think it was put in the negative) that you are the one that denys it, but I dont know that we are here to discuss that, I am not here to argue a point of law, but only to give you the reasons why the Archview appeal is under the zoning ordinance.
Mayor Brombolich – Does any council member have any questions for the petitioner?
Commissioner Pamatot – Dr. Escobedo, Are you currently leasing from facility from Fleischer–Seger on Manchester Road?
Dr. Escobedo – Yes
Com. Pamatot – Could you tell me the extent of that lease, for how many more years?
Dr. Escobedo – We just renewed it, I don't remember, I can get you a copy of that lease if you want.
Com. Pamatot – I would take your word for it.
Mayor Brombolich – Is there anyone else? If there are no further questions of the petitioner, we will seek input from any objectors that are here for this public meeting. Again, as I referred in the statement at the beginning of the meeting, anyone that would like to address this council, as an objector to this appeal, I will ask that you come forward to the microphone, state your name and address and be as brief as possible, because we have a lot of people in attendance, and we all don't want to be here all night. And I reserve the right to cut people off if you become repetitive, because if we get repetitive we will spend a lot of time saying the same

thing. Now who would like to be first?
Suzanne Anderson – I would like to ask some questions.
Mayor Brombolich – No, please, the only thing that I am asking for is input to the council, I am not going to have a cross discussion between the petitioner and the objectors.
Suzanne Anderson – My objection is, I have not seen the plans of this building and obviously the members of the council have, and perhaps you are the ones that could ask the proper questions to find out. This is a medical facility. Have you seen the plans for other medical facilities? If this like other medical facilities, or are their special things built into this particular building that are not put into medical building? Is there something special in the way of waste disposal, that you would not normally find in a building of this type, anything besides toilets or sinks, or a utility room that would have a garbage disposal, or is their any provision for any type of wall units that might have suction in them, that have been put into these plans? I would be very interested in knowing if there is anything like that.
Mayor Brombolich – I am not familiar with anything like that. Our building inspector is in attendance. Mel did you see anything unusual like that?
Mel Heinicke – No sir, I did not see anything like that, its like any other medical building that was built.
Ms. Anderson – Its like any other medical building that been building here in town, Thank you.
Mayor Brombolich – Anyone else.
Maggie Brennan – There are petitions signed by 2,000 people from Collinsville, Maryville, Caseyville, Troy, Edwardsville and St. Louis that support your denial of issuing a building permit on Pine Lake Road. We feel the applicant is attempting to conceal from the citizens of Collinsville the real use for which the building is intended.

I have another statement, I am familiar with physicians and when they plan their office buildings they are usually asked to

submit to the owner or corporation what they like in there overall planning for their office, how many rooms, what type of equipment etc.. So if this going up as a medical facility now, that does not mean that it cannot be changed in the near future for the needs of whatever is designated 3 or 4 years from now.

Mayor Brombolich – Anyone else

Ralph Heiman – I live in Collinsville. I am reminded as I listen to this, this evening that there are various undesireable facilities that all of us have read about at one time or another that start with waste disposal, dumps so to speak which are a constant problem. We could talk about hazardous wastes which today has a very special problem from the standpoint of the federal government trying to find a state that will accept such a disposal facility and certainly we have prisons – just to name a few. I would hope that the council supported by the citizens of Collinsville would continue to stay aware of disguised technically illegal setups that could ultimately house such an undesireable facility, and that we find a means to prevent this happening, if not by virtue of the kind of presentation that happened here this evening, but perhaps potentially thru a referendum or some other system.

Mayor Brombolich – Anyone else

I am Teresa Benevenuto and I want to say that I have grown up in Collinsville and I am very proud of it, and I would hate to see any kind of abortion clinic in it.

Mayor Brombolich – Mam

May name is Renee Hoskins and I am from Collinsville. I would like to say, this is America, I got into this argument at a teacher's lounge where I work, and unfortunately the majority rules and this is our town, and these men are our elected officials and the majority would seem to say, that are the people that come out on election day, these are people who petition and campaign for people whose voices are heard, and so these men have to be aware of that to, and this is what we want. We don't want anybody to build an abortion clinic in our town and kill babies here, and so our

Mayor said we are behind him and that's important and you have to remember that too that's more than the law, real legal nit-picking stuff.
Andy Klein – I have not been a long time resident of Collinsville, but I think that we look at a community here in is interested. And I address particularly these lawyers here, I am starting law school in August. And even tho you look at the fact that how can I manipulate boards how can I look and get what I want in the way of my terms, I think there are things more important in life than just how I can manipulate to get what I want. I think the people here know what the reason it and even tho abortion itself is legalized still doesn't mean that we have to support it and I think the crowd here is behind the fact that the right to life is a right that has run thru the halls of freedom throughout our country for many, many years and its not so much what the law says but what we know is right. And what you say is what Representative Melvin Price says is destructive interpretation, to get what you want. The main thing is whats in your heart, and I ask you gentlemen up here, Dr. Escobedo and you two lawyers, I hope that I can be one in three years, even tho you play the fact of words you play from the standpoint of technicalities of law can get you what you want, would you want your own children to be running around abortions, would you like it if your mother would have had you an abortion? So its more or less that the people want but more important what you know in your heart is right, because in the end run your conscience will rule.
Mayor Brombolich – Is there anyone else, if not we will move on? My name is Marie Camillo, and I am a naturalized citizen, very proud. The allegiance to the flag says freedom for all and that means the unborn children.
Mayor Brombolich – we will move on to the rebuttal. Mr. Apoian would you like to address the council again after what you have heard here or any points you would like to make before this council would make a consideration?

Mr. Apoian – Mayor I don't have much in the form of a rebuttal, I understand the ground rules. Your honor does not need for me to reiterate what I said earlier, then I would have nothing in direct rebuttal to what was said here other than the fact that the ordinances are clear, and we are entitled to the building permit.
Mayor Brombolich – Thank you. Does any council member have any further questions from the petitioner any clarification before we take some kind of action?
Commission Giglotto – The only comment I have Mayor is if I could wear a different hat now and talk as a citizen of this town and not a council member. I find it very very difficult to understand why any person no matter who, color or sex would take an oath to protect, preserve, life would want to do the exact opposite. I find that hard to believe.
Commissioner Pamatot – Mr Mayor may I say something at this time? I would like to state that what you did at the beginning of this year was a very courageous thing, that you represent this community and certain members of this council. A lot of things are permitted by our constitution throught the country, but Collinsville is my hometown and I do not necessarily allow everthing to go in this community. Mr. Mayor I would like at this time to make a motion.
Mayor Brombolich – The motion is in order.
Commission Pamatot – I move to concur with the position of the Mayor and deny a building permit to Archview Investment, Inc. on the following grounds:

1. Appeal was not filed in compliance with the requirements of Sec. 16.20.010 of the Collinsville Municipal Code.
2. It is contrary to the general health, safety and welfare of the public in the following respects:
    a) cause traffic problems
    b) cause parking problems
    c) cause crowd control problems
    d) create a public nuisance

e) is contrary to public policy of this city

3. Applicant failed to comply with requirements of the BOCA Basic Building Code/1981 Sections 11.2; 111.3; 111.5; 111.6; and 111.7.

Commission Giglotto second the motion.

Is there any discussion or comments?

Commission Klein – Mr. Mayor I would just like to made a brief statement. This decision this evening that these 5 gentlemen up here are going to vote on, setting aside the emotion issue that a good many people in the audience are here about this evening. I feel should be based upon, primarily speaking for myself to the office for which I was elected must be based solely on whether the people that are applying for something much be in compliance with the applicable statues of the state, City ordinances which the BOCA Basic building code that the motion has reference to. Using those things as the basis, I think this is what we all have to decide what is actually right and legal, based upon these things, not the emotional issue.

Mayor Brombolich – Does anyone else want to make a comment before we take roll call?

Commissioner DesPain – If we could just take a little time Mayor.

Mayor Brombolich – While the commissioners are taking time to compile their thoughts, I would like to introduce the members at the tables here. Mayor introduces the council, City Clerk, Attorneys Taylor and Urban.

Commissioner DesPain – I feel that Mayor has to make some decisions, some of which all the legal ramifications cannot be addressed specifically. I feel he has to have administrative discretion. I feel that there is an extreme emotional issue in regard to this, I do not feel that that particular emotional issue should be particularly address in that, however I do fee that he should have the administrative discretion at least that 2 of the 3 parts of the motion I concur with and upon roll call I will concur with it.

Mayor Brombolich – Would anyone else like to address? Before

we have the roll call, I think that my opinion and my viewpoints have been clear since last October, and I won't bother to reiterate, but my position has been very clear all along.
Roll Call City Clerk.

Ayes: Pamatot, Giglotto, Klein, DesPain, Brombolich.
Nayes: None

Mayor Brombolich – The appeal of the decision of that permit has been denied, the permit will stand as denied to the petitioner. The only thinkg I can say Mr. Apoian is that the minutes of the meeting will be made available to your and whatever assistance we can have to any further legality that you wish to pursue will be of a talkative nature.

Thank you everyone for attending. We are adjourned.